In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1652

IRVING SARNOFF, ET AL., PETITIONERS

v.

JOHN B. CONNALLY, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners, federal taxpayers, brought an action in the United States District Court for the Central District of California challenging the validity of the military assistance and foreign aid provisions of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, 2360, 2364, on the ground that the provisions constitute an unlawful delegation to the President of Congress' power to declare war under Article I, Sec-

tion 8 of the Constitution. The district court denied petitioners' application to convene a three-judge district court and dismissed the complaint on the ground that it lacked subject matter jurisdiction (Pet. App. 3-4). The court of appeals affirmed (Pet. App. 1-2).

Petitioners' suit is another attempt to challenge the legality of American participation in the hostilities in Vietnam on the ground that such participation was not properly authorized by Congress. Our memorandum in opposition in *Perkins* v. *Laird*, No. 71-790, certiorari denied, 405 U.S. 965, fully discusses the issue and is equally applicable to this case. For the reasons stated therein, and in our brief in opposition (pp. 17-42) in *Massachusetts* v. *Laird*, No. 42, Orignal, October Term 1970, motion for leave to file bill of complaint denied, 400 U.S. 886,[1] the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1972.

---

[1] We are providing petitioners' counsel with copies of our memorandum in *Perkins* v. *Laird* and our brief in opposition in *Massachusetts* v. *Laird*.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 472128 31